LAW-MAKING BY POPULAR VOTE;

OR,

THE AMERICAN REFERENDUM.

The Referendum is commonly thought of as a political institution peculiar to Switzerland. It is there, truly, that the name has come to have the particular signification which attaches to it to-day, and there that the institution has laid most prominent claim to the notice of students in the science of government, especially since 1874, when it was lifted out of the cantonal systems into the Federal Constitution and given a national recognition. It seems, however, to have been very generally overlooked that here in the United States, in every State of the Union, and also in the municipality, we employ, and in New England have employed since the Revolution, this same popular political principle. The Referendum may be defined as the submission of laws, whether in the form of statute or constitution, to the voting citizens for their ratification or rejection, these laws having been first passed upon by the people's representatives, assembled in legislature or convention. By a narrower definition the name might be held to apply only to laws submitted by a legislature, but the people when they vote upon a constitution or an amendment to a constitution are engaged in what is quite as much a legislative act as voting on a statute law, and especially is this so in our American States at the present time since the framers of constitutions have enlarged the concept and, therefore, altered the nature of the term constitution.

Although my province in this paper is to review the direct share of the people in the making of their laws in the United States, it may be well, in the first place, to look briefly at the Referendum as it has been developed in Switzerland. The name, Referendum, if traced back to its origin, could be shown to be very old, some writers even stating that it was in use in several

Alpine cantons as early as the sixteenth century. At any rate the delegates from the cantons to the early Federal Diets were only empowered to assent to important measures *ad referendum*, that is, subject to the approval of the governments which sent them. The institution in the perfected form in which it appears in Switzerland to-day is a development of this century. Beginning in some of the Teutonic cantonal governments, the outgrowth of the *Landsgemeinden* and the extreme democratic political inclinations of a people bred in the traditions of a folkmote system of government, it very soon fastened itself firmly in public favor. To-day every one of the twenty-two cantons in the Confederation employs the Referendum in some of its forms, not excepting Freiburg whose clerical majorities, however, have up to this time been able to prevent its introduction except in the matter of a revision of constitution.

In two cantons, Uri and Glarus, and in the two half-cantons of Appenzell, and the two half-cantons of Unterwalden, the *Landsgemeinde* still survives. On account of increase of population, and the resulting cumbrousness of legislation by mass-meeting, it has been abandoned within recent times in Schwyz and Zug. The *Landsgemeinde* is only a means of securing the Referendum without the expense or trouble of a ballot, and is possible only in a district of small territorial extent and small population. Each of these two cantons and four half-cantons has an executive power—the *Regierungsrath*—and a representative assembly—the *Landrath*. Laws are framed and prepared for enactment by this representative assembly, but it has no powers beyond those of a committee, everything being referred for ratification, rejection or amendment to the people who meet semi-annually in the *Landsgemeinde*.

In other cantons the Referendum takes simpler forms. Two kinds are distinguishable, the compulsory and the optional. The compulsory Referendum is one made obligatory by the cantonal constitution according to which laws cannot go into effect until ratified at the polls by the people. The optional Referendum is one in which there is no element of obligation, the act of submission only taking place if the people desire it.

If a certain number of signatures of voting citizens are not received within a specified time after the representative legislature approves a law it goes into force without a popular vote. These two forms exist side by side in many of the cantons and it is not easy to make a correct classification. In all the cantons, however, Freiburg included, there is a compulsory Referendum on every proposition to alter or amend the cantonal constitutions.

The Federal Referendum has existed in its present form in Switzerland since the adoption of the amended Constitution of 1874. Besides a compulsory Referendum on constitutional amendments, the Constitution contains the following guaranty of an optional Referendum :—"Federal laws as well as Federal decrees—if not of an urgent nature—must be submitted to popular vote upon demand of 30,000 qualified voters or eight cantons." The outcome of the experiment in nationalizing the Referendum has been watched with great interest by political observers everywhere. In four years, from 1875 to 1879, the people demanded the Referendum on eight laws. In sixteen years the Referendum has been taken on about twenty-five laws, including several constitutional amendments, or an average of about three in two years. The judgment of the people may be considered for the most part to have been expressed very intelligently, if we except the votes on a number of laws submitted during the period from 1879 to 1885 when there was a wave of extreme jealousy of the Federal influence and a fear in the cantons that they were being overshadowed by the Berne government. For a time the Referendum was demanded on nearly all the laws of much importance which the Chambers passed and without regard to their character or value they were defeated by large majorities.

The adversaries of the Referendum are few in Switzerland. The Ultra-Clericals and Conservatives originally opposed it, but as they have found it, in the case for instance of the re-establishment of the death penalty and the rejection of several laws looking toward centralization, to be reactionary rather than reformatory, their opposition has been partially

allayed, and indeed many leaders of the party are now its earnest supporters. Of late there seems to be less hostility to legislation tending towards centralization if the votes on the liquor monopoly, the bankruptcy code and the insurance law signify anything.

Perhaps it may not be fair to make the assumption that the New England town-meeting has had any direct influence upon the development of the Referendum in this country as the *Landsgemeinde* had in Switzerland. At any rate it is a coincidence that of the thirteen original States only two submitted their first Constitutions to popular vote, and these were Massachusetts and New Hampshire where the people had long met together in town-meetings to make their local laws. It has been asserted that in the other States the propriety of submitting the first Constitutions was not denied, but the Tories forming so uncertain a quantity, it was thought dangerous to call for a popular vote.[1] How this may have been it is not my present purpose to inquire. One good reason why only New Hampshire and Massachusetts followed this plan can doubtless be found in the fact that the States outside of New England had no easy or economical method of getting an expression of the popular judgment. In the town-meeting the people could be reached directly and while assembled to do the public business of their respective communities could at the same time confer upon matters affecting the State government. Connecticut and Rhode Island, remaining under their old Charters until 1818 and 1842, respectively, furnish no confirmatory evidence as to the relations between the town-meeting and the Referendum, for though their first Constitutions were submitted to popular vote the custom had by this time taken deep root all over the country. Vermont accepted her first Constitution from a Convention without a Referendum. There was a general feeling, though, that it was not the correct procedure, but the long boundary contests in which she had been engaged with Massachusetts, New Hamp-

1 Jameson on Constitutional Conventions, p. 499.

shire and especially, New York, made it seem unwise to take the risk of consulting the people.

In 1778 the General Court of Massachusetts prepared a Constitution which was rejected in the town-meetings. A Convention was called and after long labors another Constitution was submitted in 1780, which was ratified, and by more than two-thirds of those who voted. The Constitution provided that in 1795 the voters of the towns and plantations should express themselves upon the question of revision.[1] There was, doubtless, an influence in securing such a speedy ratification, in the knowledge that if the Constitution proved unsatisfactory or inadequate the people were to be guaranteed a part in amending it.

There was still greater difficulty in getting a Constitution to the taste of the people of New Hampshire. One submitted in 1779 was rejected, another submitted in 1781 was so much amended in the town-meetings that the Convention began work all over again and finally completed a document which was approved by the people in 1784. Here, then, in these two New England States the Referendum first appears in America, and in a very vigorous form, the people fully appreciating and asserting their right to direct consultation by their representatives.

In Pennsylvania, not a year after the Constitution of 1776 was adopted by Convention and put into effect, we learn there was much dissatisfaction among the people. The Supreme Executive Council addressed an order to the General Assembly, representing "that they are sorry to find the present Constitution of this State so dissatisfactory to any of the well affected inhabitants thereof and would gladly concur in any suitable and safe measure for the removal of this uneasiness; that they are of opinion this might be greatly attained by taking the sense of the majority of the electors throughout the counties on the important question whether a Convention be holden at some proper time to reconsider the frame of

1 Chapter VI, Art. X.

government formed by the late Convention, etc."[1] This recommendation seems to have met with no response during the ensuing war excitement. In 1790, after the Federal government had been established the need of a new Constitution was satisfied in a Convention called for that purpose by order of the Assembly. The recommendation by the old Executive Council that "the sense of the majority of the electors throughout the counties" be taken, was not heeded and again a Constitution was prepared and went into force without coming directly to a vote of the people. None of the thirteen original States, indeed, followed the example of Massachusetts and New Hampshire, until New York led the way in 1821.

About fifteen years after the century opened, it came to be a generally recognized principle that to the people of the States belonged a direct voice in deciding what their governments should be. Mississippi and Missouri[2] when they came into the Union had Constitutions which had been adopted by direct popular vote. The Constitution of New York about 1820 became notably unsatisfactory. Governor Clinton in a message to the Legislature recommended: First.—That the question of calling a Convention should be submitted to the people and decided by them by a majority vote at the polls of election; and Second :—That if a Convention should in this way be called that the doings thereof should again be referred to the people for their confirmation or rejection.[3] A bill was passed by the Legislature according to the Governor's recommendations; the people voted "Convention" or "No Convention," with a large majority in the affirmative, and a subsequent act ordering the election of delegates stated that it should be the duty of the said Convention to submit their proposed amendments to the decision of the citizens of the State, entitled to vote under this act, together or in distinct

1 Colonial Records, Vol XI, p. 220.

2 Mississippi, 1817; Missouri, 1820.

3 Hammond's History of Political Parties in the State of New York, Vol. I, p. 539.

propositions as might appear most expedient.[1] From this time on, most of the new States came into the Union with Constitutions which had received the direct sanction of the people, and the old States, as fast as new Constitutions were thought to be necessary, adopted the same process. The town-meeting principle had developed into the Referendum and it was a firmly established institution the country over. To-day, the people of not more than one or two States in the Union would be likely to be denied, nor would they permit themselves to be denied, the right to pass upon the form and frame of their government. It is a significant fact that the Constitution of Mississippi adopted last fall was not voted upon at the polls.

From this habit of employing the Referendum, in the case of new constitutions, grew up naturally the Convention Referendum and the Amendment Referendum. Perhaps these latter were hastened in their coming by a recognition of the fact by those who had the ordering of these things, that if a constitution was to be submitted to the people with the expectation of having it ratified, some means would have to be devised by which they could change it if it proved in any way unsatisfactory. A section in the New Hampshire Constitution of 1792 provided, that the people should vote once every seven years whether a convention for revision should be called or not, and, further, that no alteration should be made before the same should be "laid before the towns and unincorporated places, and approved by two-thirds of the qualified voters present and voting on the subject."[2] The right of the people to determine whether they would alter their government, and if so, in what manner, was here plainly expressed. This Constitution is still in force in New Hampshire and a number of amendments have been made by this clumsy process.

Amendment by convention was at the beginning the only means of amendment and the question as to when a convention should be called for purposes of revision very soon came to be a subject for a Referendum. This is now the uniform method

1 *Id.* Pages 559 and 560.
2 Sections 99 and 100.

when a new constitution is wanted, or the old one requires radical revision. When to submit the question of calling a convention is usually left to the judgment of the legislature. Ordinarily a majority vote of the people decides the matter, but the Constitution of Kentucky of 1850,[1] required not only a majority of those voting on the question, but of all the electors in the State qualified to vote for State representatives, and, to make the conditions yet more difficult of fulfilment, this vote must be secured at two successive elections, a feat only accomplished in 1889. Delaware finds this kind of a majority vote necessary also, but it is sufficient if expressed at one election.[2]

To find a method of amendment easier than by convention was reserved for Connecticut in 1818, when the Amendment Referendum was invented in the form it has since very generally taken, the passage of two successive legislatures followed by a vote of the people.[3] A Convention met in Massachusetts in 1821 to propose amendments to the State Constitution and a few months later a body of delegates met in New York for a similar purpose. Among the articles proposed to the people of each State for their approval or rejection was the Connecticut plan. Henceforth the Amendment Referendum by legislature became an admittedly necessary feature in every State government. The constitutions prescribe several different forms of treatment before the legislatures may submit amendments. Most in favor is, either the passage by two-thirds of the members of each house of one legislature, or a passage by a simple majority through two successive legislatures. There are other plans in States which have old constitutions.[4] In

1 Article XII.

2 Constitution of 1831, Article IX.

3 Article XI, Constitution of 1818.

4 Two-thirds passage through one Legislature: Alabama, Colorado, Georgia, Idaho, Illinois, Kansas, Louisiana, Maine, Michigan, Mississippi, Montana, Texas, Washington, West Virginia and Wyoming.

Majority passage through one Legislature: Arkansas, Minnesota, Missouri, and South Dakota.

Three-fifths passage through one Legislature: Florida, Maryland, Nebraska, North Carolina and Ohio.

Majority passage through two successive Legislatures: California, Indiana, Iowa, Nevada, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, Virginia and Wisconsin.

Delaware alone the people have no direct share in constitutional amendment by legislature.[1] In every other case they are given the final disposition, except in South Carolina, where, after passing the legislature once, then going to the people, amendments revert to the legislature again.[2]

It is proper to remark here, however, that from the simple statement that the people of the States vote upon their constitutions, and the amendments thereto, one can form but a very incomplete idea of what this right really means. It is only after considering the nature of the content of these constitutions that the Referendum as exemplified in America is seen to have its closest likeness to the Swiss Referendum. When it is remembered that in these days the American State constitutions are codes of laws limiting the Legislature to a short biennial session, defining in detail what it may and may not do in that short session, there is a better understanding of how great a direct force in the enactment of the laws the people have become.

Majority of one Legislature and two-thirds of the next: Connecticut and Tennessee.

A majority in the Senate and a two-thirds vote in the House of Representatives, two Legislatures: Massachusetts. New Hampshire, and Vermont amend only by convention. and in the latter State the people are not consulted directly. The amendments are prepared by a council of censors which meets septennially and they are ratified by a convention elected for the purpose.

1 Constitution of 1831, Article IX. "The general assembly, whenever two-thirds of each House shall deem it necessary, may, with the approbation of the Governor, propose amendments to this Constitution, and at least three, and not more than six months before the next general election of representatives, duly publish them in print for the consideration of the people, and if three-fourths of each branch of the Legislature shall, after such an election and before another, ratify the said amendment, they shall be valid to all intents and purposes as part of this Constitution."

2 Constitution of 1868, Article XV, Section 1. "Any amendment or amendments to this Constitution may be proposed to the Senate or House of Representatives. If the same be agreed to by two-thirds of the members elected to each House, such amendment or amendments shall be entered on the journals, respectively, with the yeas and nays taken thereon; and the same shall be submitted to the qualified electors of the State at the next general election thereafter for representatives, and if a majority of the electors qualified to vote for members of the general assembly, voting thereon, shall vote in favor of such amendment or amendments, and two-thirds of each branch of the next general assembly shall, after such an election, and before another, ratify the same amendment or amendments by yeas and nays, the same shall become part of the Constitution: Provided, That such amendment or amendments shall have been read three times, on three several days, in each house."

Instead of a representative law-making body which shall meet once a year, the people are showing a preference for a representative law-making body which shall meet once in ten or twenty years and which submits its work for their approval or disapproval at the polls. There is thus a tendency toward taking our laws in bulk from a convention instead of in small lots each year from a legislature; the code to be changed at intervals when it may need it by the initiation of the legislature and the ratification of the people. Matters which were once left to the legislature are now dealt with in the constitutions. To illustrate, the following are now deemed suitable subjects to be treated in State constitutions :—the prohibition or chartering of lotteries, the prohibition or regulation of the liquor traffic, the establishment of tax-rates, the founding and location of schools and asylums, regulations relating to the rights and duties of railroads and other corporations and defining the relations of husbands and wives, and debtors and creditors, the establishment of a legal rate of interest, the salaries of public officials, etc., etc. Indeed there are now few matters, which are subjects for legislation at all, that may not, according to the new conception of a constitution, be dealt with by the conventions.

The change in the character of the constitutions has of necessity radically altered the character of amendments. Legislation has, of late years, been more and more disguised in these amendments and sent to the Referendum. In line with this tendency to much amendment is the accompanying tendency to easy amendment. In nearly all the new States and those older ones which have Constitutions recently adopted, the time in which amendments may be effected is reduced by one half. While previously the endorsement of two successive Legislatures was the prevalent plan before submitting to the people a proposition for constitutional change, now passage through one Legislature is coming to be considered sufficient. This greater facility in amendment is one of the demands of the time. If a constitution is to enter into the technique and detail of government and trespass on those

fields of action before reserved to the Legislature, it cannot have that character of permanence which it had when it was only an outline to direct the Legislature. It must change as laws change, and laws must change as the needs of the people change. Whether this has a tendency to degrade the Legislatures or not I shall not discuss. Certain classes of amendments, it may be observed, it has become the custom for Legislatures to submit to the people without the deliberation which would be given to statute laws upon the same subjects. This is notably the case with amendments to prohibit the manufacture and sale of intoxicants, and those relating to woman suffrage. In the treatment of prohibition, especially in the Eastern States, this tendency of later years is very manifest. It is usual for few members of the Legislature which passes such an amendment to vote for it affirmatively at the polls.

In some States in which an amendment must pass two Legislatures, and where it is not especially otherwise provided by the constitution, amendments are often voted upon at special elections, when, it is contended, there is better chance to get an intelligent expression of public opinion, both because the people are then less occupied with other matters involving the triumph and defeat of particular men, and on account of lessening the evils of electoral barter and kindred forms of corruption likely to exist when general issues are being decided. The extra expense of opening and equipping the polls is on the other hand urged against the habit of special elections. The ballots take different forms in different States, and are usually drawn up as briefly as possible. If it is a prohibition amendment the tickets are likely to read simply, "For the Prohibition Amendment" and "Against the Prohibition Amendment." Others are given very popular names as "Judiciary Amendment," "Suffrage Amendment," "Tax Amendment," etc.

It is not necessary however to search under the disguises of these constitutional amendments to find law-making by Referendum in the American State. Statutory legislation on

certain classes of subjects is passed by the Legislatures on condition that it be approved by the people. Probably the first subject of this kind to be put to popular vote was the location of State capitals, a Referendum which was first recognized in a Constitution in Texas, in 1845.

In order permanently to settle the matter it was provided that an election be held on the first Monday of March 1850 at which the question of the location of the seat of government should be put to vote.[1] This has since come to be a matter to be left altogether to the vote of the people in States which make any pretense to conducting affairs on a modern and progressive basis. A section of Article III of the Constitution of Pennsylvania reads: "No law changing the location of the capital of the State shall be valid until the same shall be submitted to the qualified electors of the Commonwealth at a general election, and ratified and approved by them." Similar provisions are to be found in the Constitutions of fifteen States, including all the new States and Mississippi, and in very few of the rest would the Legislatures be likely to pass such laws without referring them to the people.

Another kind of Referendum was invented by Iowa and appears in the first Constitution of that State framed in 1846, though it was suggested in an amendment to the Constitution of Michigan three years before.[2] This declares that laws for the contraction of debt, except those specified by the Constitution, shall be submitted to popular vote. The clause referred to in the Constitution of Iowa reads as follows: "Except the debts hereinbefore specified in this article, no debt shall be hereafter contracted by or on behalf of this State unless such debt shall be authorized by some law for some single work or object to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within twenty years from the time of the contracting thereof; but no

1 Constitution of 1845, Art. III, Sec. 35.
2 Constitution of 1835, Michigan. Amendment ratified 1843.

such law shall take effect until at a general election it shall have been submitted to the people and have received a majority of all the votes cast for or against it at such election."

On referring to the article on the "debts hereinbefore specified" it is seen that these, without the popular approval, can be contracted only to the aggregate amount of $250,000 and this only to supply "casual deficits or failures in revenue." Unlimited power exists, however, to contract debts to repel invasion or suppress insurrection.

The Convention to frame a new Constitution for the State of New York which convened soon after, took this debt Referendum from Iowa with no material modification except to raise the limit for the supply of "casual deficits" to $1,000,000, a figure more in keeping with the greater needs and requirements of the State. This Referendum has since become, with varying casual debt limits, very popular with Western Constitutional Conventions. California puts the limit at $300,000; Illinois, $50,000 in 1848, raised to $250,000 in 1870; Kansas, $1,000,000; Kentucky, $500,000; Missouri, $250,000; Montana, $100,000; The State of Washington, $400,000; Idaho not above the sum of one and a half per centum upon the assessed value of the taxable property in the State; and Wyoming, in any year, not above the revenues of that year.

Another Referendum which found its way into the State Constitutions mainly during the bank excitement appears first in Iowa, in 1846, in the following form: "No act of General Assembly authorizing or creating corporations or associations with banking powers, nor amendments thereto, shall take effect or in any manner be in force until the same shall have been submitted separately to the people, at a general or special election, as provided by law, to be held not less than three months after the passage of the act, and shall have been approved by a majority of all the electors voting for and against it at such election."[1] There are provisions similar to this in the Constitutions of Illinois, Kansas, Michigan, Missouri and

1 Constitution of 1846, Iowa, Art. VII., Sec. 5.

2 Iowa, Constitution of 1846, Article VIII, Section 5; also Constitution of 1857.

Ohio. Wisconsin goes to even greater lengths to protect the people from "wild-cat" banking, and the Constitution after declaring that the Legislature shall have no power to incorporate banks or banking companies says: "The Legislature may submit to the voters at any general election the question of 'bank or no bank'; and if at any such election a number of votes equal to a majority of all the votes cast at such election on that subject shall be in favor of banks then the Legislature shall have power to grant bank charters or to pass a general banking law with such restrictions and under such regulations as they may deem expedient and proper for the security of the bill holders: *Provided*, that no such grant or law shall have any force or effect until the same shall have been submitted to a vote of the electors of the State at some general election and been approved by a majority of the votes cast on that subject at such election."[1] This is in the form of a double Referendum, and is a remarkable evidence of existing faith in the wisdom and discernment of the people and of deep seated distrust for Legislatures.

Another interesting Referendum appeared in the Constitution of Colorado in 1876 which is patterned after by Montana and Idaho. As it occurs in Colorado it takes this form:— "The rate of taxation on property for State purposes, shall never exceed six mills on each dollar of valuation and whenever the taxable property within the State shall amount to $100,000,000 the rate shall not exceed four mills on each dollar of valuation; and whenever the taxable property within the State shall amount to $300,000,000 the rate shall never thereafter exceed two mills on each dollar of valuation, unless a proposition to increase such rate, specifying the rate proposed, and the time during which the same shall be levied, be first submitted to a vote of such of the qualified electors of the State as in the year next preceding such election shall have paid a property tax assessed to them within the State, and a majority of those voting thereon shall vote in favor thereof in

1. Wisconsin, Constitution of 1848, Article XI, Section 5.

such manner as may be provided by law."[1] Idaho and Montana express this Referendum in much the same words except that the mill rates and valuation limits differ. The question is, in these States, moreover, submitted to all the qualified voters instead of property tax payers only.

There are numerous examples of the Referendum in many other States. The Constitution of Illinois provides that the Illinois and Michigan Canal shall never be sold or leased but upon a vote of the people.[2]

An amendment to the Constitution of Minnesota states that no laws levying a tax or making other provision for the payment of the interest or principal of the bonds of the Minnesota State Railroad are to have any force until approved by the people.[3]

The Legislature of North Carolina by the Constitution of 1876 was denied power to loan the State credit in aid of any person, association or corporation, except to help in the completion of such railroads as may have been unfinished at the time of the adoption of the Constitution, unless the subject be first submitted to the people.[4]

The school lands of the State of Kansas can never be sold but with the consent of the people.[5]

The Constitution of Colorado gave to the Legislature power to pass a law creating a debt for the erection of public buildings, provided this was ratified in the Referendum.[6]

In Illinois, the Legislature, by the Constitution of 1870, was restricted in its expenditure on the new capital grounds and state house to $3,500,000. Any proposition for additional expenditure was to be voted on by the people.[7]

In Colorado, the Constitution provides that the question of woman suffrage may at any election be submitted to the people.[8]

1. Article X, Section 11.
2. "Additional Section," Article X, Constitution of 1870.
3. Amendment to Constitution of 1857, ratified 1860.
4. Article V, Section 4.
5. Constitution of 1859, Article VI, Section 5.
6. Constitution of 1876, Article XI, Section 5.
7. Article IV, Section 33
8. Article VII, Section 2.

The location of a college for the education of the negro youth of the State was by the last Constitution of Texas left to the people.[1]

The sites of the State university, insane asylum and penitentiary are to be voted on by the people of Wyoming, after the expiration of ten years, and all new State institutions are to be located only on popular vote.

A plan of proportional representation in the upper chamber of the State Legislature was made a matter for popular action in West Virginia by the Constitution of 1872.[2]

Besides these Referendums made imperative by the Constitution, there have been Referendums ordered by State Legislatures, on matters to which it was certain that one important class of the people was agreed and another important class was opposed, and which the Legislatures were unwilling to decide upon themselves. In more recent years this form of the Referendum is not common. Its constitutionality has been seriously questioned[3] and since the constitutions have come to be enlarged it is more convenient to bring these questions before the people as amendments.

There remains the Municipal Referendum. To-day, especially in the West, there are very important examples of the Referendum in local matters. There are County Referendums, City Referendums, Township Referendums and School District Referendums. Some of these we have found to our advantage to adopt in the local communities of the East; even Mississippi in her last Constitution guarantees to the people of the counties certain referendums, and Texas and Missouri under the influence of the progressive political civilization of the West in which since the war they have been partial participants, in their last Constitutions recognize as vested in the people a veto on various types of local legislation.

Just as the people of the States have come to be consulted in the location of State capitals, the people of the counties

1. Article VII, Section 14.

2. Article VI, Section 50.

3. Rice vs. Foster, 4 Harr. (Del) R. 479, a case directly in point, and other cases.

have come to be consulted in the location of county seats. Nineteen constitutions make this guaranty. The change of county lines, the division of counties into two or three, etc., another matter lying very near to the hearts of the people, is usually left to be settled by Referendum. Twenty-four State constitutions agree in reserving this right to the counties. The people of the counties of several Western States can determine when they shall adopt township organization, and cities, in other States, can decide only by popular vote, when they shall be organized by the Legislature into separate counties.

As in the State, there are debt and tax matters which may be passed upon only by the people of cities, boroughs, counties, school districts, etc. In Pennsylvania no municipality may contract debt above two per cent. upon the assessed value of the taxable property therein without a Referendum. In some other States the municipal indebtedness is limited in any year by the revenue thereof, unless assent to incur further liability is given by a majority or a two-thirds vote of the people, as the case may be. The new States of the West altogether prohibit the creation of loans, except upon the people's authority. In some States there are limits to the tax rates beyond which the municipal authorities may not go unless the people agree. In some communities the local credit may be loaned to railroads, water, and other corporations if the people decide affirmatively in the Referendum. Cities along the Gulf of Mexico in the State of Texas are privileged by the Constitution of the State to make harbor improvements after consulting the people.

Then, as in the State, the prohibition of the liquor business is often left to the people of cities and counties. These "dry" and "wet" contests have come to be very common in many States where there is local option by Constitution or statute.

The newest and most interesting form of our municipal Referendums we find in California and the State of Washington where city charters and all amendments thereto are submitted for popular approval or rejection. This is the first appearance of

anything like republican government in our American cities and it may be the step towards a much-needed and effective reform. Certain it is that if these charters come to be as comprehensive and as much like codes of laws as the State Constitutions have grown to be, there will be diminished opportunity for the evils at present so conspicuous in American city government. In April, 1887, the people of California voted upon and accepted an amendment[1] to the Constitution which took the framing of city charters out of the hands of the Legislature. It provides that any city with over 10,000 inhabitants "may frame a charter for its own government." This is the process. A board of fifteen freeholders, men, who have for at least five years been qualified electors of the State is elected. These freeholders are entrusted with preparing a charter for submission to the people of the city. If it is accepted by a majority vote, then it must be sent to the Legislature "for its approval or rejection as a whole without power of alteration or amendment, and if approved by a majority vote of the members elected to each house" it becomes the charter of the city. It is provided further that: "The charter so ratified may be amended at intervals of not less than two years by proposals therefor, submitted by legislative authority of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals and ratified by at least three-fifths of the qualified electors voting thereat and approved by the Legislature as herein provided for the approval of the charter."

It will be seen that there is a chance here for the interference of the Legislature, a right that it might exercise autocratically. Yet it must always either approve or not approve; there is no power of amendment or revision to suit any particular ideas that may be held by a majority of the Legislature. It is nothing more than a power of veto and though the experience in California has been short there has not yet developed in the Legislature any disposition to thwart the popular will. Two years ago Stockton, San Jose, Los An-

1. Article XI, Sec. 8.

geles and Oakland made new charters which were accepted by the people and the Legislature obligingly ratified them.[1]

When Washington came into the Union she brought with her a Constitution in which there is a very similar article.[2] Here, however, only cities of 20,000 population can take advantage of the charter Referendum. There is the difference, and it may prove to be a very important one, that the Legislature has no power of veto. After being framed by the board of fifteen freeholders the charter is submitted and if approved by a majority immediately becomes the organic law of the city.

In general, then, and to recapitulate, the people of the States of the United States are conceded to have by the development of over a century certain rights to direct consultation by the Legislatures in the making of constitution and statute law. The people in practically every State are competent and they alone are competent to decide whether they shall have a new form of government. This is the Convention Referendum as we have seen, when the vote is upon "Convention" or "No Convention." If they decide for a new form of government it rests with them to determine what that new form shall be—when the people vote "For the Constitution" or "Against the Constitution." Then at any time they only shall say how this form of government shall be altered or amended—when the people vote for or against the amendments. These matters all concern the nature and form of the government, which the people are by location and circumstances forced to live under and obey.

The following subjects, as we have seen, are not submitted to the Referendum in all the States, or in the States of any one section, but have been looked upon very generally as subject to popular disposal. First, the location of the seat of government. The people having the guaranty of determining their form of government might naturally be allowed the right of saying where that government shall be administered. This came into practice with the civilization that sprang up on the

1. Editorial in San Francisco *Alta-California* (newspaper).
2. Article XI Section 10, Constitution of 1889.

frontier, and the jealousies that naturally arose among rival towns for the honor. There have been several amusing illustrations of this recently in the States of Washington, North Dakota and especially South Dakota. Secondly, in matters bearing upon the collection and expenditure of the public money, banking, etc., questions of public policy which come very intimately into the daily life of the settlers of the western prairies where these Referendums were first employed and have found their fullest development. And thirdly, questions upon which there are bound to be vigorous and violent differences of opinion and which the Legislatures decline to take responsibility for, as, to-day, prohibition, woman suffrage and, in Louisiana, the chartering of a great lottery, and, in the last generation, the question of slavery.

The municipal Referendums, as I have indicated, will allow of very much the same classification : the kind of government, city or borough, the question of township organization and in two States, city charters ; the location of the county capitals ; tax and revenue matters ; prohibition and questions upon which the people are likely violently to disagree.

Just what is in store for us in the future in the nature and growth of the Referendum must be wholly a matter of speculation. There is reason to think that the people will be brought into more intimate relation with their municipal governments at a very near date. The Referendum has become an issue in the communal politics of Belgium,[1] and, here as there, a devotion to the institution as a means to political reform is developing which may lead to more important results than any which have yet been attained.

In the States a progress can be traced which may portend continued and still greater progress. What another era of Constitution building may bring forth none can tell. The Referendum may never reach the general constitutional form here that it now has in Switzerland, but it is interesting to note what a member of the Convention which in 1873 framed the present Constitution of Pennsylvania proposed and argued

1. Le Referendum, M. Georges Lorand. Brussels ; 1890.

for.[1] Mr. Samuel C. T. Dodd, Delegate-at-large from Venango County, maintained in a speech on the floor of the Convention that laws should be referred to the people. In the section of the Constitution he advocated, the option, however, was made to rest, not with the people as in Switzerland, but with the Legislature. As proposed it read: "The Legislature shall have power to refer the adoption or rejection of any law to a vote of the qualified electors of the State, or that portion of the State to be affected thereby." There have been similar propositions before the Conventions of other States.

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1. Debates Pennsylvania Convention 1873, Vol. II. pages 587-588.